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DAC/SB

PATENT
Customer No. 22,852
Attorney Docket No. 02860.0676-00000

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)
Kaori ONO et al.)
Application No.: 09/850,167) Group Art Unit: 1711
(Now U.S. Patent No. 6,712,896)) Examiner: Thao T. Tran
Filed: May 8, 2001)
For: CELLULOSE ESTER FILM,)
OPTICAL FILM, POLARIZING)
PLATE, OPTICAL)
COMPENSATION FILM AND)
LIQUID CRYSTAL DISPLAY)

Mail Stop Patent Ext.
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

APPLICATION FOR PATENT TERM ADJUSTMENT

In accordance with 37 C.F.R. § 1.705(d), Applicants respectfully request reconsideration of the patent term adjustment indicated on the face of the patent that this application matured into, namely, U.S. Patent No. 6,712,896. If an Office miscalculation necessitated this Application Request, Applicants respectfully request that the 37 C.F.R. § 1.18(e) fee payment of \$200.00 be waived. If the fee is not waived, however, please charge the \$200.00 fee to Applicants' Deposit Account No. 06-0916.

I. Statement of the Facts

The face of U.S. Patent No. 6,712,896 ("the '896 patent") indicates a patent term adjustment of only 21 days. Applicants, however, calculate that the patent term adjustment of the '896 patent is instead 77 days. The circumstances giving rise to Applicants' calculated adjustment are provided below in both text and chart form. For convenience, a copy of the PAIR printout showing the Office's calculated adjustment is also enclosed. In light of the circumstances detailed below, Applicants respectfully request reconsideration of the 21-day adjustment.

A. Relevant Dates

The relevant actions during prosecution of the application are as follows:

Date	Action	Basis Under 37 C.F.R. § 1.702	Adjustment
5/8/2001	Applicants filed the present application.	none	0
9/23/2002	PTO mailed Restriction Requirement.	§ 1.702(a)(1)	+77 days
10/21/2002	Applicants filed Response to Restriction Requirement.	none	0
12/02/2002	PTO mailed Restriction Requirement.	none	0
12/23/2002	Applicants filed Response to Restriction Requirement.	none	0
3/11/2003	PTO mailed Restriction Requirement.	none	0
4/11/2003	Applicants filed Response to Restriction Requirement.	none	0
4/22/2003	PTO mailed Non-Final Office Action.	none	0
7/22/2003	Applicants filed Response to Non-Final Office Action.	none	0
9/16/2003	PTO mailed Notice of Allowance.	none	0
12/12/2003	Applicant filed Comment on Determination of Patent Term Adjustment.	none	0

B. Correct Patent Term Adjustment

As is indicated in the chart above, Applicants are entitled to 77 days of patent term adjustment because the Office failed to comply with Rule 702(a)(1) when it mailed its first substantive communication to Applicants outside of the 14-month grace period to which the Office is allowed from the filing date of the application. Specifically, Applicants filed the patent application on May 8, 2001. The Office mailed a Restriction Requirement on September 23, 2002, which was 77 days greater than the 14-month grace period allowed the Office. See 37 C.F.R. § 1.702(a)(1). Accordingly, Applicants are entitled to 77 days of patent term adjustment.

The Office, however, as is illustrated on the enclosed PAIR printout, appears to have credited the '896 patent with two additional adjustments erroneously attributable to the Office's delay. In particular, after Applicants filed a response December 23, 2002, the Office mailed a Restriction Requirement March 11, 2003. For this, the PAIR printout indicates a credit of 18 days. The adjustment, which appears to have been measured incorrectly from an October 21, 2002 action by Applicants, should have been measured from Applicants' December 23, 2002 action. Likewise, after Applicants filed a response July 22, 2003, the Office mailed a Notice of Allowance on September 16, 2003. For this, the PAIR printout indicates a credit of 36 days. This adjustment, which appears to have been measured incorrectly from Applicants' April 11, 2003 action, should have been measured from Applicants' July 22, 2003 action.

According to Rule 702(a)(2), the Office is provided a 4-month grace period to respond to such replies by applicants. The March 11 and September 16, 2003 papers

mailed by the Office were mailed within the 4-month grace period and, thus, were timely. Accordingly, the 18-day and 36-day adjustments appear to be in error.

Additionally, the Office appears to have reduced this adjustment by an amount erroneously attributable to an alleged delay by Applicants. In particular, the Office has reduced the adjustment by 110 days because on December 12, 2003 Applicants filed a Comment on Determination of Patent Term Adjustment, alerting the Office about a possible Office miscalculation. See PAIR printout. The 110-day reduction appears to have been measured from Applicants' response filed July 22, 2003. Reductions in adjustment, however, are taken for an applicant's failure to engage in reasonable efforts to conclude prosecution. See 37 C.F.R. § 1.704(a). Applicants respectfully submit that alerting the Office about a possible Office miscalculation should not constitute such failure and that there were no other circumstances constituting a failure to engage in reasonable efforts to conclude processing or examination of this application.

Accordingly, the 110-day reduction appears to be in error.

Applicants further submit that the patent is not subject to a terminal disclaimer and is, thus, not limited in this way in the amount of adjustment that can be applied.

II. Conclusion

In view of the foregoing, Applicants respectfully request that the current 21-day patent term adjustment of U.S. Patent No. 6,712,896 ("the '896 patent") be reconsidered and that a 77-day patent term adjustment be applied instead. Applicants further request application of the correct patent term adjustment, regardless of Applicants' calculation.

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Application No. 09/850,167
Attorney Docket No. 02860.0676-00000
Customer No. 22,852

Further, if Applicants' calculation is applied, but later is found to be in error, Applicants respectfully request that no prejudice result from any such unintentional error.

Please grant any extensions of time required to enter this Request and charge any additional required fees to our Deposit Account No. 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

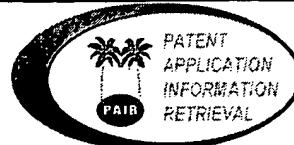
Dated: April 22, 2004


By: _____
Michele L. Mayberry
Reg. No. 45,644

Attachments: PAIR Printout for Application No. 09/850,167



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			Days
Filing or 371(c) Date:	05-08-2001	USPTO Delay (PTO):	131
Issue Date of Patent:	03-30-2004	Three Years:	-
Pre-Issue Petitions (days):	+0	Applicant Delay (APPL):	110
Post-Issue Petitions (days):	+0	Total PTA:	21
USPTO Adjustment (days):	+0	Explanation of Calculations	

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File History

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 Maintenance Statement - View 04 year payment window
 Maintenance Statement - View 08 year payment window
 Maintenance Statement - View 12 year payment window

Maintenance Fees Available: Mon-Fri 5:30 AM to Midnight, Sat-Sun-Hol. 7:30 AM to 8:00 PM E.T.

Patent Term Adjustment History				
Number	Date	Contents Description	PTO (days)	APPL (days)
40	03-30-2004	Patent Issue Date Used in PTA Calculation		
39	02-23-2004	Receipt into Pubs		
38	02-04-2004	Application Is Considered Ready for Issue		
37	12-12-2003	Mailroom Date of Issue Fee Payment		
36	12-12-2003	Miscellaneous Incoming Letter	110	
35	01-08-2004	Receipt into Pubs		
34	12-12-2003	Issue Fee Payment Recorded		
33	11-25-2003	Workflow - File Sent to Contractor		
32	09-16-2003	Mail Notice of Allowance	36	
31	09-16-2003	Notice of Allowance Data Verification Completed	↑	
30	09-16-2003	Case Docketed to Examiner in GAU	↑	
29	09-08-2003	Notice of Allowability	↑	
28	07-29-2003	Date Forwarded to Examiner	↑	
27	07-22-2003	Response after Non-Final Action	↑	
26	04-22-2003	Mail Non-Final Rejection	↑	
25	04-21-2003	Non-Final Rejection	↑	
24	04-15-2003	Date Forwarded to Examiner	↑	
23	04-11-2003	Response to Election / Restriction Filed	↑	
22	03-11-2003	Mail Restriction Requirement	18	
21	03-10-2003	Requirement for Restriction / Election	↑	

20	01-14-2003	Case Docketed to Examiner in GAU	↑	
19	12-26-2002	Date Forwarded to Examiner	↑	
18	12-23-2002	Response to Election / Restriction Filed	↑	
17	12-02-2002	Mail Restriction Requirement	↑	
16	11-30-2002	Requirement for Restriction / Election	↑	
15	11-26-2002	Case Docketed to Examiner in GAU	↑	
14	11-05-2002	Case Docketed to Examiner in GAU	↑	
13	10-22-2002	Date Forwarded to Examiner	↑	
12	10-21-2002	Response to Election / Restriction Filed	↑	
11	09-23-2002	Mail Restriction Requirement	77	
10	09-23-2002	Requirement for Restriction / Election	↑	
9	07-30-2002	Case Docketed to Examiner in GAU	↑	
8	11-08-2001	Case Docketed to Examiner in GAU	↑	
7	10-02-2001	Transfer Inquiry	↑	
6	09-28-2001	Transfer Inquiry	↑	
5	08-08-2001	Transfer Inquiry	↑	
4	07-07-2001	Application Dispatched from OIPE	↑	
3	07-05-2001	Correspondence Address Change	↑	
2	05-12-2001	IFW Scan & PACR Auto Security Review	↑	
1	05-08-2001	Initial Exam Team nn	↑	